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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,660	11/12/2003	Gilbert Madrid	ENDOLOG.028C2	7268
20995 7590 02/05/2009 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			EXAMINER BOUCHELLE, LAURA A	
			ART UNIT 3763	PAPER NUMBER
			NOTIFICATION DATE 02/05/2009	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com  
eOAPilot@kmob.com

### Office Action Summary

**Application No.**

10/706,660

**Applicant(s)**

MADRID ET AL.

**Examiner**

LAURA A. BOUCHELLE

**Art Unit**

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SG/08)  
Paper No(s)/Mail Date 11/14/08
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/14/08 has been entered.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 24-28, 30, 31, 33, 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Leary et al (US 5024234). Leary discloses a catheter having a first lumen 118 extending the length of the tubular body 100, and a second lumen 116 extending from a proximal port 122 to a distal port 120, a proximal and distal extension of the second lumen, the proximal and distal ends of the second lumen are occluded 124 (Col. 7, lines 40-41). See Fig. 11. The catheter may be reinforced with a braided wire (Col. 4, lines 47-50). There is no expandable member located on the device. The catheter has a constant diameter (Col. 4, lines 54-56). The axes of the first and second lumens appear to be centered about a common plane, in other words the lumens are not disclosed as rotating about each other.

***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Leary. Claim 29 calls for the extensions to be occluded by glue plugs. Leary is silent as to the composition of the plugs. However, it would have been obvious to one of ordinary skill in the art at the time of invention to use any suitable material to form the plugs. Applicant has failed to disclose that glue plugs serve a specific purpose or solve a specific problem, and one would expect the device of Leary to work equally well with plugs formed of any suitable material.
6. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Leary in view of Miraki (US 5389087). Claim 32 differs from Leary in calling for the second lumen to include a slit. Miraki teaches a two lumen catheter having a first lumen and a second lumen extending between a distal and a proximal port, the second lumen further including a slit 42 that allows the catheter to be removed from the guidewire during a catheter exchange procedure as is standard in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Leary to include a slit as taught by Miraki to allow for removal of the catheter without dislodging the guidewire.

***Response to Arguments***

7. Applicant's arguments with respect to claims 24-34 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LAURA A. BOUCHELLE whose telephone number is (571)272-2125. The examiner can normally be reached on Monday-Friday 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 517-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Laura A Bouchelle  
Examiner  
Art Unit 3763

/L. A. B./  
Examiner, Art Unit 3763

/Nicholas D Lucchesi/  
Supervisory Patent Examiner, Art Unit 3763